

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASPER MORRISON,

Plaintiff,

CIV. S-04-1157 MCE PAN

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Memorandum of Decision

Defendants.

—oOo—

Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision requiring he repay supplemental security income ("SSI") benefits.

Plaintiff received \$16,401.85 SSI Aged Alien benefits from March 1997 to May 1999 based upon an application in which plaintiff stated he and his wife had \$820. Records later showed that in February 1997 plaintiff had deposited \$10,000 in a checking account and held a deposit certificate worth

1 \$108,413.22. When asked, plaintiff said he did not remember the
2 accounts but his attorney later verified they existed. Plaintiff
3 was allowed reasonable time to present contradictory evidence but
4 did not.

5 Recovery of an overpayment may be waived if a person is
6 without fault and recovery would defeat the purpose of the Act,
7 viz. deprive a person of income required for living expenses or
8 be "against equity and good conscience." 20 C.F.R. § 404.506.

9 Defendant found plaintiff was not without fault because
10 at all relevant times he had more than the maximum amount allowed
11 in bank accounts.

12 This court must uphold the Secretary's determination that
13 a plaintiff is not disabled if the Commissioner applied the
14 proper legal standards and if the Secretary's findings are
15 supported by substantial evidence. Sanchez v. Secretary of
16 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
17 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
18 1200 (9th Cir. 1990). Substantial evidence means more than a
19 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401, 91
20 S.Ct. 1427 (1971), but less than a preponderance. Bates v.
21 Sullivan, 894 F.2d 1059, 1061 (9th Cir. 1990). It means such
22 relevant evidence as a reasonable mind might accept as adequate
23 to support a conclusion. Richardson, 402 U.S. at 401. The court
24 cannot affirm the Commissioner simply by isolating supporting
25 evidence but must consider the entire record, weighing evidence
26 that undermines as well as evidence that supports the Secretary's

